No. 81-50

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1981

PRUDENCE J. CAMARDO, ARTHUR FALZONE, HENRY J. PAPE, IVAN WAHLS, LILLIAN WAHLS, and all persons similarly situated, BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT No. 4, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 10, BOARD OF TRUSTEES OF COMMON SCHOOL DISTKICT No. 8, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 6; All of the TOWN OF GREECE, and DANIEL A. STETZEL, SR., *Appellants,*

vs.

CITY OF ROCHESTER, N.Y., BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, BOARD OF

(Over)

Appeal from the Court of Appeals of the State of New York

MOTION TO DISMISS APPEAL

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Appellees.

Action No. 1

ELLEN ANDERSON and CHARLES and GERTRUDE LA VALLE, and all persons similarly situated, BERNADETTE UEBLACKER and JAMES and PATRICIA BRITT, and all persons similarly situated,

Appellants,

vs.

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

Action No. 2

MOTION TO DISMISS APPEAL

Pursuant to Rule 16, paragraphs 1(b) and 1(d), of the Revised Rules of this Court, appellee moves that this appeal be dismissed for the reasons and on the grounds hereinafter set forth.

QUESTION PRESENTED

Can this Court summarily determine that a provision of the charter of the City of Rochester, New York, requiring the Board of Education thereof to accept children in its schools from outside the city without payment of tuition did not create a relationship of such a nature as to be protected against subsequent legislative change by the Contract Clause of the United States Constitution?

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Appellees.

Action No. 2

Appeal From The Court of Appeals Of The State of New York

MOTION TO DISMISS APPEAL

STATEMENT

This case comes before the Supreme Court of the United States on appeal pursuant to 28 U.S.C. §1257(2). After five days of trial, the trial court (Supreme Court of the State of New York, Monroe County) decided on motion that

> "Chapter 125 of the Laws of 1975 of the State of New York was a constitutional enactment which was not repugnant to either the Constitution of the United States or the State of New York, and that the Plaintiffs failed to prove the breach of any contractual obligation or prove any cause of action against the Defendants . . ." (J.S. A-8)

The Appellate Division of the Supreme Court of the State of New York, Fourth Department, unanimously affirmed the trial court's judgment. The Appellate Division, which reviews both the law and facts, stated as follows:

> "Plaintiffs failed to prove any of the elements necessary to a contractual relation; therefore, their claim of contract impairment fails." (J.S. A-4)

The Court of Appeals of the State of New York dismissed the appeal to that court *sua sponte* upon the ground that no

substantial constitutional question is directly involved (J.S. A-1).

The facts most pertinent for a summary dismissal of the appeal herein are as follows: By Chapters 359 of the Laws of New York, 1915, 547 of the Laws of New York, 1918, and 519 of the Laws of New York, 1922, the Legislature made numerous amendments to the charter of the City of Rochester. These amendments were all accepted by the city but it is undisputed that such acceptance was not required and that the legislature could have imposed such amendments upon the city by again passing the bills without the acceptance by the city. Persons outside of the city had no involvement in the legislative process even though they might thereby be annexed to and made a part of the city, except through the normal political channels of electing or influencing their state legislators.

The statutes of 1915, 1918 and 1922 require scrutiny since these are the documents which must contain the elements of a contract, if one is to be found. Chapter 359 of the Laws of 1915 was a general amendment to the charter of the City of Rochester and footnote #1a to the title states as follows:

> "The amendments effected by this chapter are so numerous and extensive that it is impracticable to indicate the changes made."

Section 1 enlarged the boundaries of the seventeenth ward of the city to include lands not relevant to the issue herein.

Section 2 enlarged the boundaries of the twenty-third ward of the city to include the Village of Charlotte and portions of the Town of Greece. Part of Greece School District No. 4 was included in the annexed area and part was not.

Section 3 permitted the Board of Education to allow nonresidents of the city to attend city schools and required the board to allow certain children in the unannexed part of Brighton two and ten and Greece

four to attend its schools without the payment of tuition.

Section 4 stated that territory heretofore or herein annexed remained in their former respective assembly districts; transferred to the city the rights and title to all public highways and streets formerly belonging to towns and villages from which territory was taken, and limited any franchises or other rights granted in the annexed territory.

Section 5 abolished the Village of Charlotte and all of its offices, positions and employments; ceased all of the powers of town, village or school district officers over the annexed territory except for minor tax collection duties; transferred all real and personal property, moneys, books and records, of the Village of Charlotte and school district number four to the city; required the city to assume and perform all unexecuted contracts and assume all outstanding indebtedness of said village and school district; declared uncollected school and village taxes to be a valid lien upon lands against which they were assessed and with respect to the Village of Charlotte and school district number four stated that in the annexed territory they should be collected by the city and belong to the city and in the unannexed part of school district four they should be collected by the school district or county officials and belong to the city. It also provided that in the annexed portion of school district number ten that the taxes should be collected by the proper officers of the school district or county.

Section 6 provided that neither the Village of Charlotte nor school district number four should have the power to issue bonds or notes, incur indebtedness for any one purpose in excess of five hundred dollars, or convey or sell real or personal property without the approval in writing of the mayor of the City of Rochester. It also prorated the levy of taxes in the territory annexed to expenses to be incurred prior to January 1, 1916.

Section 7 provided that territory heretofore and herein annexed to the city would be subject to the same laws and ordinances as the remainder of the city. It was also provided that a corporation operating a street surface railroad must not charge any passenger more than five cents for one continuous ride from any point on its road to any other point thereon, within the limits of the City of Rochester.

Section 8 provided that Section 6, prohibiting the issuance of bonds and notes, etc. should take effect immediately, and the remainder of the act on January 1, 1916.

It can easily be seen from the above outline of the amendments to the city charter by the statute in question that it was a resolution of a number of contemporary governmental problems.

Chapter 547 of the Laws of 1918 followed a similar pattern of complexity as did Chapter 519 of the Laws of 1922. However, in both of these later laws one or more of the school districts whose territory was split by an annexation were paid sums of money to be applied upon their respective debts. (See Section 10 of Chapter 547 of the Laws of 1918 and Section 8 of Chapter 519 of the Laws of 1922)

At the time of the above charter amendments, Appellant school districts number four, eight, and ten of the Town of Greece were common school districts under the Education Law and by that law were only authorized to provide an education program through the eighth grade. The city school district provided a program through the twelfth grade.

Section 2 of Chapter 359 of the Laws of 1915, establishing the boundaries of the twenty-third ward, was amended by Chapter 547 of the Laws of 1918, which changed those boundaries further and annexed more territory from both school districts number four and ten of the Town of Greece.

Thus, some persons in the unannexed portion of school district number 4 of the Town of Greece lost the free tuition privilege by virtue of a further annexation.

Section 3, which amended section three hundred eighty-three of the city charter, and established the free tuition privilege for school district number four of the Town of Greece, was repealed on June 8, 1917. On May 10, 1918, a new section to be numbered three hundred and eighty-one was added to the charter. As renumbered and with minor language changes, it again granted the free tuition privilege to school district number four of the Town of Greece, two and ten of the Town of Brighton and added three new districts.

Section 6, which forbid school district number four of the Town of Greece to issue any bonds or notes except with the approval in writing of the mayor of the City of Rochester was repealed by Chapter 712 of the Laws of 1943.

Section 7, which guaranteed a five cent ride on the street surface railroad to any point within the City of Rochester, and which by common understanding was critical to the political success of the statute, has long since been eliminated.

It should also be observed that an amendment to the New York State Constitution in 1927 took away the power of annexation to cities without the approval of the voters in the area to be annexed, thus drastically changing the circumstances existing when the statutes claimed to create a contract were enacted.

Thus other amendments to the charter of the City of Rochester contained in the 1915 legislative act were not regarded as creating any contract rights and were freely changed or repealed from time to time.

Chapter 125 of the Laws of 1975, sometimes referred to as the "May 1975 Act", abolished those districts in which children residing therein had been given free tuition privileges

in the 1922 amendment to the City of Rochester charter. It added these areas to existing central school districts in Monroe County, chiefly the Appellee herein, thus providing complete educational facilities, transportation and programs for the children involved and full participatory status for the citizens and taxpayers. The city was required to guarantee seats in its school system for children who were already enrolled and for siblings of these children. The legislature thus fulfilled its constitutional duty to fully provide for the education of the children. It further provided that the central school districts in which the children now resided would pay tuition to the city for those children who continued to attend the city schools. Having done this, it was a formality to relieve the City of Rochester of its obligation to accept these children without the payment of tuition.

The property owners in the abolished districts, who had formerly been paying little or no school taxes on their real property, were required to pay school taxes to the central districts in which they resided, being assessed for 20% the first year, 40% the second year, 60% the third year, 80% the fourth year and 100% in all subsequent years. Because of the dismissal of Appellant's claim at the end of their proof on the threshold issue of a failure to prove any contract to be impaired, the current record may not provide adequate facts upon which to summarily proceed to further questions such as the extent of any obligation, changes in circumstances, the degree of impairment permissable, reasonableness of legislation considering the public purpose involved, and the effect of the severability clause of the statute.

ARGUMENT

This motion to dismiss is made basically on the ground that the statutes relied upon by the Appellants do not create any contract rights, and that if no contract rights exist there is no substantial federal question to be reviewed, and in fact no jurisdiction in the Supreme Court since there is no contract the obligation of which could be impaired by state action.

In accordance with the language of the court in *Appleby v. City of New York*, 271 U.S. 364, we assume that the Supreme Court of the United States must determine independently

> ". . . first, was there a contract; second, what was its proper construction and effect; and, third, was its obligation impaired by subsequent legislation as enforced by the state court?" (Id. page 380)

We also assume that although this is usually a matter of local law, that this Court will

> "determine it from the law of the state as it was when the deeds were executed to be derived from statutes then in force and from the decisions of the state court then and since made; but we must give our own judgment derived from such sources, and not accept the present conclusion of the state court without inquiry." (Id. page 380)

Conceding that this Court must make such an independent inquiry, it is our position that in the instant case this inquiry may be made and answered summarily upon this motion and without plenary consideration, briefs on the merits and oral argument. Insofar as the parties are concerned, this would be a decision on the merits. (*Hicks v. Miranda*, 422 U.S. 205)

1. The very subject matter and location of the statutes in question precludes their being understood as contracts. The statutory provisions being relied upon were located in amendments to the charter of the City of Rochester. The supreme law of the land relating to the status of municipalities and their

relationship with the states and their property interest had been ruled on by this Court in *Hunter v. City of Pittsburgh*, 207 U.S. 161 in 1907, eight years before the first charter amendment herein relied on. This Court stated at page 178:

> "This court has many times had occasion to consider and decide the nature of municipal corporations, their rights and duties, and the rights of their citizens and creditors . . . (citations omitted) . . . It would be unnecessary and unprofitable to analyze these decisions or quote from the opinions rendered. We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the State Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.

> *Although the inhabitants and property owners may by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences.* The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it." (Emphasis ours)

The Hunter case was quoted and followed in *Reynolds v. Sims*, 377 U.S. 533 (1964)

The provision of the charter relied on by the Appellants addresses the Board of Education of the City of Rochester, a separate body corporate, and is concerned with the state function of education. The law in this area was well understood in the year 1915. Article IX, Section 1 (now Article XI, Section 1) of the New York Constitution read as follows:

> "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."

Article VIII, Section 1 (now Article X, Section 1) of the Constitution of the State of New York provided for the formation of corporations, including municipal corporations. Largely because of the Dartmouth College case (*Dartmouth College v. Woodward*, 4 Wheat 518) the New York Constitution also contained a reservation of powers with respect to such acts which stated as follows:

> "All general and special acts passed pursuant to this section may be altered from time to time or repealed."

This was the known state of the law at the time of the amendments to the city charter in 1915, 1918, and 1922. With respect to school districts, the law had been judicially interpreted in 1902 by the highest New York court as follows:

> "A legislative grant to a corporation of special privileges if not forbidden by the constitution, may be a contract; but where one of the conditions of the grant is that the legislature may alter or revoke it, a law altering or revoking, or which has the effect of altering or revoking the exclusive character of such privileges cannot be regarded as one impairing the obligation of the contract, whatever may be the motive of the legislature or however harshly such legislation may operate in the particular case upon the corporation or parties affected by it. The corporation, by accepting the grant subject to the legislative power so reserved by the constitution, must be held to have assented to such reservation . . . Such an act may be amended, that is, it may be changed by additions to its terms or by qualifications of the same. It may be altered by the same power and it may be repealed. What is it that may be repealed? It is the act of incorporation. It is this organic law on which the corporate existence of the school district depends which may be repealed, so that it shall cease to be a law, or the legislature may adopt the milder course of amending the law in matters which need amendment, or altering it when it needs substantial change. All this may be done at the pleasure of the legislature. That body need give no reason for its action in the matter."

Board of Education v. Board of Education, 1902, 76 App. Div. 355, 78 N.Y.S. 522, affirmed 179 N.Y. 556, 71 N.E. 1128.

Those portions of the charter amendments wherein the legislature provided for the education of children were discharging a state, and not a local function, over which the power of the legislature was and is plenary. See *Union Free School District No. 22 v. Wilson*, 281 App. Div. 419 at 424, (1943).

> "The power of the Legislature over the educational system of the State is plenary. It may allocate functions among units of the educational system in accordance with its judgment as to what will best serve the educational interests of the State (N.Y. Const. art. XI,

> Section 1; Matter of Bethlehem Union Free School v. Wilson, 303 N.Y. 107; Board of Education v. Board of Education, 76 App. Div. 355, aff'd 179 N.Y. 556)."

It is submitted that the combination of having the relied upon provisions in the city charter, clearly subject to change, and the subject matter being education, a state function, and the clear current exposition of the law by both this Court and the state courts, make any claim that the provision created a contract untenable.

2. Even if the statutory provisions relied upon were not part of the charter of the City of Rochester and concerned with education as its subject, the clear language of the provision does not admit it to be construed as a contract. The charter language as it finally stood by Chapter 519 of the Laws of New York, 1922, and remained until its effective repeal by the May 1975 Act was:

> "§381. Attendance of nonresident pupils. The board of education may allow the children of persons not residents of the city to attend the schools under the care and control of the board upon the payment of such tuition and upon such terms as the board may by resolution prescribe. Permission must be granted to children residing in those portions not annexed of school districts numbers two and ten of the Town of Brighton, as such districts existed on the first day of March, nineteen hundred and thirteen, of school district number five of the Town of Brighton, as the same existed on the first day of March, nineteen hundred and twenty-two, of school district number four of the Town of Greece as the same existed on the first day of March, nineteen hundred and fifteen, and of school district number six of the Town of Gates and numbers eight and ten of the Town of Greece, as the same existed on the first day of March, nineteen hundred and eighteen, to attend without the payment of tuition schools under the care and control of the board. The board must cause to be made and filed in its office maps showing the boundaries of the aforesaid districts as existing on said respective dates."

The language is a direction to the Board of Education of the City of Rochester to give permission to unidentified children residing in a particular area to attend the city schools without payment of tuition. The language does not address specific parties even though it may have had an effect, though not a purpose, to provide general encouragement to property owners to move into the areas so identified. The fact that specific parties are not addressed is very important to the law of contract at the time since in 1903 this Court had ruled in *Wisconsin and Michigan Railway v. Powers,* 101 U.S. 379 that Michigan's repeal of an earlier tax exemption granted to certain qualifying railroads was not an impairment of the obligation of contract. The action of the railroads therein was directly encouraged by the statute, as opposed to the indirect encouragement herein. But, nevertheless, this Court, speaking through Mr. Justice Holmes, states the following at page 385:

> "The broad ground in a case like this is that, in view of subject matter, the legislature is not making promises, but framing a scheme of public revenue and public improvement. In announcing its policy and providing for carrying it out it may open a chance for benefits to those who comply with its conditions, but it does not address them, and therefore it makes no promise to them. It simply indicates a course of conduct to be pursued, until circumstances or its view of policy change. *It would be quite intolerable if parties not expressly addressed were to be allowed to set up a contract on the strength of their interest in and action on the faith of a statute, merely because their interest was obvious and their action likely, on the face of the law.*" (emphasis added)

In addition to not addressing specific parties, there was no bargained for exchange. The free tuition privilege was a gratuity on the part of the state legislature insofar as the property owners in the annexed parts of the school districts were concerned. There was no consideration, which may be another way of expressing the same contractual infirmity. Such

a gratuity creates no vested rights. In *Dodge v. Board of Education*, 302 U.S. 74 (1937) at page 79, Justice Roberts stated "If, upon a construction of a statute, it is found that the payments are gratuities, involving no agreement of the parties, the grant of them creates no vested rights".

No time limit was stated, which is an important element of any express contract, and which leaves a critical contract term subject to implication.

By the time frame of 1915-1922 it was a well established principle of interpretation in a contract with a state that all ambiguities in the language relied upon would be read in favor of the state. (see *Charles River Bridge v. Warren Bridge*, 11 Pet. 420 (U.S. 1837).

3. The decisions of the state courts in this case, though not conclusive upon this Court, are entitled to considerable weight. Whether there was a contract created by statuatory enactments or as a result of those enactments, is a federal question for the purposes of this motion. But that federal question depends upon an analysis of the settled rules of state decisions prior thereto, and decisions made subsequently, as herein, are to be followed unless "palpably erroneous". A succinct summary of this concept was contained in *Phelps v. Board of Education*, 300 U.S. 319, 322-323 (1937) by Mr. Justice Roberts as follows:

> "This court is not bound by the decision of a state court as to the existence and terms of a contract, the obligation of which is asserted to be impaired, but where a statute is claimed to create a contractual right we give weight to the construction of the statute by the courts of the state. (citations omitted) . . . Here those courts have concurred in holding that the act of 1909 did not amount to a legislative contract with the teachers of the state and did not become a term of the contracts entered into with employes by boards of education. *Unless these views are palpably erroneous we should accept them*" (emphasis ours)

We do not know of a suggestion that the New York Courts have in any way manipulated local law to evade a federal constitutional question. In the case at bar, the state courts were in total agreement. The trial justice and five justices of the Appellate Division were unanimous in their holding that no contract had been shown to exist and seven judges of the Court of Appeals were unanimous that no substantial constitutional question was directly involved.

CONCLUSION

For the foregoing reasons, the Appellee moves that this appeal be dismissed.

Respectfully submitted,

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